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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-90315; File No. SR-OCC-2020-013]

Self-Regulatory Organizations; The Options Clearing Corporation; Notice of Filing of Proposed Rule Change to Update The Options Clearing Corporation’s Recovery and Orderly Wind-Down Plan

November 3, 2020.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),¹ and Rule 19b-4 thereunder,² notice is hereby given that on October 20, 2020, The Options Clearing Corporation (“OCC”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I, II, and III below, which Items have been prepared primarily by OCC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Clearing Agency’s Statement of the Terms of Substance of the Proposed Rule Change

This proposed rule change by OCC would amend OCC’s Recovery and Orderly Wind-Down Plan (“RWD Plan” or “Plan”), adopted pursuant to the requirement in Rule 17Ad-22(e)(3)(ii),³ to reflect: (i) changes to OCC’s capital structure resulting from the disapproval of OCC’s previously approved “Capital Plan”⁴ and the subsequent approval of OCC’s “Capital

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 17 CFR 240.17Ad-22(e)(3)(ii).

⁴ Securities Exchange Act Release No. 85121 (Feb. 13, 2019), 84 FR 5157 (Feb. 20, 2019) (SR-OCC-2015-02).

Management Policy,”⁵ and (ii) changes made to each chapter of the Plan during OCC’s annual internal review and update of the Plan, as required by OCC’s internal governance.

The RWD Plan is included as confidential Exhibit 5 to SR-OCC-2020-013. Material proposed to be added is marked by underlining and material proposed to be deleted is marked by strikethrough text.⁶ The proposed rule change does not require any changes to the text of OCC’s By-Laws or Rules. All terms with initial capitalization that are not otherwise defined herein have the same meaning as set forth in the OCC By-Laws and Rules.⁷

II. Clearing Agency’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, OCC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. OCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of these statements.

(A) Clearing Agency’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(1) Purpose

Background

⁵ Securities Exchange Act Release No. 86725 (Aug. 21, 2019), 84 FR 44952 (Aug. 27, 2019) (SR-OCC-2019-007).

⁶ OCC has also filed an advance notice with the Commission in connection with this proposal. See SR-OCC-2020-806.

⁷ OCC’s By-Laws and Rules can be found on OCC’s public website:<https://www.theocc.com/Company-Information/Documents-and-Archives/By-Laws-and-Rules>.

On August 23, 2018, the Commission approved OCC's proposed rule change to formalize and update OCC's RWD Plan, consistent with the requirements of Rule 17Ad-22(e)(3)(ii).⁸ As approved, the RWD Plan incorporated key pieces of OCC's previously approved Capital Plan, including but not limited to the Capital Plan's provision for "Replenishment Capital."⁹ In OCC's RWD Plan, Replenishment Capital was one of the tools by which OCC could have recapitalized in certain of its recovery and wind-down scenarios.

On February 13, 2019, the Commission disapproved OCC's Capital Plan.¹⁰ The disapproval of the Capital Plan left OCC's RWD Plan with several invalid references to the Capital Plan or to certain of its component parts, including references to Replenishment Capital as one of OCC's identified tools for recovery and wind-down and references to a trigger event within the Capital Plan as one of OCC's recovery triggers. As a result of the disapproval of the Capital Plan, OCC subsequently proposed the "Capital Management Policy," which among other things establishes a new mechanism for funding OCC's replenishment capital and changes OCC's "default waterfall" (i.e., the resources available to OCC in the event of a Clearing Member's suspension).¹¹ These changes to OCC's replenishment capital and default waterfall necessitated changes to existing passages concerning the same in the RWD Plan.

⁸ Securities Exchange Act Release No. 83918 (Aug. 23, 2018), 83 FR 44091 (Aug. 29, 2018) (SR-OCC-2017-021).

⁹ Securities Exchange Act Release No. 74452 (Mar. 6, 2015), 80 FR 13058 (Mar. 12, 2015) (SR-OCC-2015-02). The Capital Plan was a previously approved plan for raising additional capital under which the securities options exchanges that own equity in OCC committed to contributing additional capital to OCC under certain conditions and provided for the provision of further Replenishment Capital in certain circumstances.

¹⁰ See supra note 5.

¹¹ See supra note 6.

In addition, OCC has made changes to its RWD Plan as a result of its annual review and update process. As adopted, the RWD Plan itself recognizes OCC's internal governance requirement to review and update the Plan at least every twelve months. Accordingly, during the first several months of 2019 and 2020, an internal, cross-disciplinary working group within OCC conducted a review and recommended numerous changes to the RWD Plan, which were approved by OCC's management, the Risk Committee of OCC's Board of Directors ("Board") and OCC's Board. The changes resulting from the adoption of the Capital Management Policy and the changes from OCC's annual review process are discussed in greater detail below.

Proposed Changes

The proposed rule change would update each of the eight chapters of the RWD Plan.¹² A summary description of the types of changes proposed to each of the eight chapters of the RWD Plan is provided below:

Chapter 1: Executive Summary

Chapter 1 of the RWD Plan provides an executive summary and overview of OCC's proposed Plan. The proposed changes to Chapter 1 of the Plan would simply align the executive summary and overview to the changes made throughout subsequent chapters of the Plan.

Chapter 2: OCC Overview

Chapter 2 of the RWD Plan provides information that OCC believes would be essential to relevant authorities for purposes of recovery and orderly wind-down planning, as well as to provide readers of the Plan with necessary context for the subsequent discussion and analysis of OCC's "Critical Services" and "Critical Support Functions" in Chapter 4 (discussed below) and

¹² In addition to the changes summarized below, OCC would also make administrative changes throughout the Plan to update various OCC internal policy and procedure names.

of OCC's wind-down process in Chapter 6 (discussed below). The proposed rule change would update several figures and factual discussions to reflect changes since the Plan's initial approval by the Commission. The types of changes being made to Chapter 2 would include: (i) updated figures and numbers about market share and contract volume; (ii) updated lists of securities options exchanges and futures exchanges cleared by OCC; (iii) updated organizational charts, headcount numbers, discussions of OCC's management structure and descriptions of management roles and responsibilities; (iv) updated descriptions of OCC's Board's responsibilities and procedures, lists of Board members, and descriptions of OCC's Board committees' roles and responsibilities;¹³ (v) revised descriptions that would acknowledge certain program changes that have occurred since the initial 2018 approval of the RWD Plan (e.g., changes to OCC's cross-margining arrangements, changes in credit facilities and changes concerning investment counterparties, exchanges and vendors); (vi) updated graphs of OCC's Clearing Fund total monthly deposits; and (vii) updated discussions of OCC's retirement plan obligations. In addition to these updated figures and factual discussions, the proposed rule change would (i) revise Chapter 2 to remove excerpts from OCC's most recent annual report (which would be relocated to one of the appendices); (ii) replace a lengthy overview of OCC's risk management program with a more concise summary; (iii) update a summary description of OCC's interconnections with external vendors and a list of vendors that provide OCC critical technology and information reporting services; and (iv) revise a fee management discussion to align with changes resulting from the implementation of the Capital Management Policy.¹⁴

¹³ Securities Exchange Act Release No. 84473 (Oct. 23, 2018), 83 FR 54385 (Oct. 29, 2018) (SR-OCC-2018-012).

¹⁴ The changes to the fee management discussion concern the potential for OCC's Board to lower the direct costs of participation if OCC's shareholder equity exceeds 110% of a

Chapter 3: Support Functions

Chapter 3 of the RWD Plan identifies each of OCC's different internal support functions and provides a brief description of the activities performed by each such support function. For purposes of the RWD Plan, "internal support functions" are the various departments within OCC that are necessary for OCC to provide its services to Clearing Members and other participants. Since the initial 2018 approval of the RWD Plan, OCC has added two additional internal support functions and expanded its Office of the Chief Executive Officer, renamed the "Corporate" support function, to include OCC's executive officers and administrative support staff. Accordingly, the proposed rule change would add two new internal support functions (and descriptions thereof) and replace the Office of the Chief Executive Officer with the Corporate support function, bringing the total number of internal support functions from 14 to 16. Since the initial 2018 approval of the RWD Plan, OCC also has modified and updated its administrative descriptions of the roles and responsibilities of the 14 internal support functions that were discussed in the initial 2018 approval of the RWD Plan. Accordingly, the proposed rule change would update the descriptions of all OCC's internal support functions so they align with the modified and updated internal administrative descriptions of such functions.

predetermined "Target Capital Requirement." See Securities Exchange Act Release No. 86725 (Aug. 21, 2019), 84 FR 44944 (Aug. 27, 2019) (SR-OCC-2019-007).

Chapter 4: Critical Services and Critical Support Functions

Chapter 4 of the RWD Plan identifies OCC’s “Critical Services”¹⁵ and “Critical Support Functions.”¹⁶ The proposed rule change would group two previously identified Critical Services into a single Critical Service (i.e., the changes would simply use a single term to refer to two services that were previously listed separately). The proposed rule change also would update dated factual references and make other minor changes to OCC’s description of its evaluations of Critical Services and Critical Support Functions, notably to recognize the consolidation of the two previously identified Critical Services into a single Critical Service and recalibrate the evaluation of an OCC service in considering whether it is a Critical Service. The proposed rule change also would change the mapping of Critical Services to Support Functions to recognize the “primary,” “secondary,” or “non-critical” nature of each Support Function, which better aligns with OCC’s internal taxonomy.

Chapter 5: Recovery Plan

Chapter 5 of OCC’s proposed Plan constitutes OCC’s recovery plan. The proposed rule change would make conforming edits to references to certain former provisions within OCC’s By-Laws that have since been relocated to OCC’s Rules.¹⁷ The proposed rule change also would revise the inventory and description of OCC’s available “Enhanced Risk Management Tools”

¹⁵ A “Critical Service,” as defined in the proposed Plan, would be a service provided by OCC that, if interrupted, would likely have a material negative impact on participants or significant third parties, give rise to contagion, or undermine the general confidence of markets the FMU serves.

¹⁶ A “Critical Support Function,” as defined in the proposed Plan, would be a function within OCC that must continue in some capacity in order for OCC to be able to continue providing its Critical Services.

¹⁷ See Securities Exchange Act Release No. 83735 (Jul. 27, 2018), 83 FR 37855 (Aug. 2, 2018) (SR-OCC-2010-008).

and “Recovery Tools” to (i) replace references to and discussions of Replenishment Capital with references to and descriptions of the replenishment structure under the adopted Capital Management Policy; (ii) replace references to and discussions of the discretionary use of OCC’s current and/or retained earnings with references to and discussions of the mandatory contribution – immediately following the use of margin, deposits in lieu of margin and the Clearing Fund deposits of the suspended Clearing Member – of OCC’s current and retained earnings greater than 110% of OCC’s annually-established “Target Capital Requirement,” as implemented by the Capital Management Policy; (iii) update the description of how OCC could increase the minimum required cash contribution to the Clearing Fund to reflect enhancements to OCC’s liquidity risk management framework that the Commission approved in 2020;¹⁸ (iv) include a discussion of the mandatory contribution of any unvested portions of OCC’s Executive Deferred Compensation Plan (“EDCP”), in proportion to any charges against the mutualized portion of OCC’s Clearing Fund, as implemented by the Capital Management Policy; and (v) update the governance of the Recovery Tools to include OCC’s Chief Executive Officer and Chief Operating Officer in various communications to OCC’s Executive Chairman. The proposed rule change also would revise the list of “Recovery Trigger Events” in the recovery plan to (i) delete one of the Recovery Trigger Events that was derived from a defined term in the Capital Plan, (ii) consolidate two other Recovery Trigger Events into a single, operational loss-related recovery trigger, and (iii) add a qualification onto an existing liquidity loss-related recovery trigger. The proposed rule change would also delete unnecessary historical data on business volumes from

¹⁸ See Securities Exchange Act Release No. 89014 (Jun. 4, 2020), 85 FR 35446 (Jun. 10, 2020) (SR-OCC-2020-003).

the hypothetical stress scenarios in Chapter 5 that illustrate how OCC could use its recovery tools.

Chapter 6: Wind-Down Plan

Chapter 6 of OCC's RWD Plan constitutes OCC's orderly wind-down plan. The proposed rule change would revise the list of Wind-Down Plan Trigger Events ("WDP Triggers") to consolidate two current WDP Triggers into a single WDP Trigger related to OCC's financial resource requirements, and consolidate two other current WDP Triggers into a single WDP Trigger related to operational disruption. The proposed rule change would also update discussions of the tools by which OCC could have recapitalized in certain of its recovery and wind-down scenarios. As revised, these discussions would describe replenishment capital available under the adopted Capital Management Policy, deleting descriptions of Replenishment Capital available under the former Capital Plan. The proposed rule change also would update certain of the references to OCC's internal support functions and certain references to headcount in Chapter 6.

Chapter 7: RWD Plan Governance

Chapter 7 of OCC's RWD Plan section details the governance of OCC's RWD Plan. The proposed rule change would revise the lists of OCC staff involved in the completion of the plan (largely to give effect to the fact that the titles of certain offices changed since the RWD Plan's proposal in 2017).

Chapter 8: Appendices

Chapter 8 of OCC's RWD Plan is comprised of several appendices. The proposed rule change would update several lists within the appendices to reflect changes that have occurred since the Plan's initial approval by the Commission. The types of changes being made to

Chapter 8 would include: (i) updated lists of OCC's clearing membership; (ii) updated lists of participation on OCC's Board; (iii) updated lists of settlement banks and letter of credit banks; (iv) updated lists of vendors and service providers that would be necessary to support a recovery or wind-down of OCC; (v) updates to the extreme hypothetical scenarios designed by OCC that, if such scenarios occurred, could cause OCC to activate the RWD Plan; and (vi) updated lists of the key agreements to be maintained during recovery and wind-down efforts.

(2) Statutory Basis

OCC believes that the proposed rule change is consistent with Section 17A of the Act¹⁹ and the rules thereunder applicable to OCC. Section 17A(b)(3)(F) of the Act²⁰ requires, in part, that the rules of a clearing agency be designed, in general, to protect investors and the public interest. The RWD Plan is designed to enhance OCC's ability to address extreme stresses or crises by establishing a framework that OCC could use to navigate the use its Enhanced Risk Management Tools and Recovery Tools, with the aim of maintaining OCC's viability as a going concern. In the event that OCC's recovery efforts are not successful, the RWD Plan would seek to improve the possibility that a resolution of OCC's operations can be conducted in an orderly manner, thereby minimizing the disruption to Clearing Members and market participants and improving the likelihood of minimizing the risk of contagion to the broader financial system. Accordingly, OCC believes the conforming updates to the RWD Plan would improve the possibility of OCC's effectively addressing a variety of potential risks, thereby improving OCC's ability to ultimately maintain market and public confidence during a time of unprecedented

¹⁹ 15 U.S.C. 78q-1.

²⁰ 15 U.S.C. 78q-1(b)(3)(F).

stress. In this regard, OCC believes the proposed rule change ultimately would protect investors and the public interest in a manner consistent with Section 17A(b)(3)(F) of the Act.²¹

OCC also believes that the proposed rule change is consistent with Exchange Act Rule 17Ad-22(e)(3)(ii), which requires each covered clearing agency to establish, implement, maintain and enforce written policies and procedures reasonably designed to include plans for the recovery and orderly wind-down of the covered clearing agency necessitated by credit losses, liquidity shortfalls, losses from general business risk, or any other losses.²² As stated above, the RWD Plan would describe OCC's plans to recover from, or orderly resolve its operations as a result of, severe stress brought about by credit losses, liquidity shortfalls, losses from general business risk or other losses.²³ The proposed updates to the RWD Plan would improve the accuracy of the inventory of OCC's Recovery Tools and improve OCC's evaluation of scenarios which may potentially prevent OCC from providing its Critical Services as a going-concern, as well as OCC's plans for recovery or orderly wind-down. Further, the proposed changes to the Plan would update and improve the information that a resolution authority may reasonably anticipate as necessary for purposes of recovery and orderly wind-down planning.²⁴ In this regard, OCC believes its proposed rule change is consistent with Rule 17Ad-22(e)(3)(ii).²⁵

The proposed rule change is not inconsistent with the existing rules of OCC, including any other rules proposed to be amended.

²¹ 15 U.S.C. 78q-1(b)(3)(F).

²² 17 CFR 240.17Ad-22(e)(3)(ii).

²³ 17 CFR 240.17Ad-22(e)(3)(ii).

²⁴ See 81 FR at 70810.

²⁵ 17 CFR 240.17Ad-22(e)(3)(ii).

(B) Clearing Agency's Statement on Burden on Competition

Section 17A(b)(3)(I) of the Act²⁶ requires that the rules of a clearing agency not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. OCC does not believe that the proposed rule change would impact or impose any burden on competition.²⁷ The proposed rule change would update OCC's RWD Plan. The proposed updates to the RWD Plan are the result of OCC's annual review and update process; these proposed changes would revise certain factual representations, update certain organizational discussion and make changes to conform to OCC's adopted Capital Management Policy. None of the proposed updates to the RWD Plan would affect Clearing Members' access to OCC's services or impose any direct burdens on clearing members. Accordingly, the proposed rule change would not unfairly inhibit access to OCC's services or disadvantage or favor any particular user in relationship to another user.

For the foregoing reasons, OCC believes that the proposed rule change is in the public interest, would be consistent with the requirements of the Act applicable to clearing agencies, and would not impact or impose a burden on competition.

(C) Clearing Agency's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

Written comments on the proposed rule change were not and are not intended to be solicited with respect to the proposed rule change and none have been received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the Federal Register or within such longer period up to 90 days (i) as the Commission may designate if it finds

²⁶ 15 U.S.C. 78q-1(b)(3)(I).

²⁷ 15 U.S.C. 78q-1(b)(3)(I).

such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

- (A) by order approve or disapprove the proposed rule change, or
- (B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-OCC-2020-013 on the subject line.

Paper Comments:

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-OCC-2020-013. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be

withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street, NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of OCC and on OCC's website at <https://www.theocc.com/Company-Information/Documents-and-Archives/By-Laws-and-Rules>.

All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly.

All submissions should refer to File Number SR-OCC-2020-013 and should be submitted on or before **[INSERT DATE 21 DAYS FROM PUBLICATION IN THE FEDERAL REGISTER]**.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²⁸

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2020-24783 Filed: 11/6/2020 8:45 am; Publication Date: 11/9/2020]

²⁸ 17 CFR 200.30-3(a)(12).